

9 FAM 40.26 NOTES

(TL:VISA-461; 09-11-2002)

9 FAM 40.26 N1 BACKGROUND AND SUMMARY OF INA 212(A)(2)(G)

(TL:VISA-461; 09-11-2002)

Section 604 of Public Law 105-292 October 27, 1998, the International Religious Freedom Act (IRFA+) of 1998, amended the INA by adding subsection (G) to Section 212(a)(2). INA 212(a)(2)(G) provides a visa ineligibility for certain religious persecutors. It requires the refusal of a visa and the denial of entry to foreign government officials (and their spouses and children) who, within the previous 24 months, have been responsible for, or directly participated in, certain "particularly severe forms of religious persecution," as defined in 9 FAM 40.26 N3.1 below. This legislation also created within the Bureau of Democracy, Human Rights and Labor (DRL) the Office of International Religious Freedom (DRL/OIRF).

9 FAM 40.26 N2 ADVISORY OPINIONS

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Post must submit all cases involving potential INA 212(a)(2)(G) ineligibilities to CA/VO/L/A for an advisory opinion. When submitting the case for review, the application must be denied under INA 221(g) and the applicant (and any spouse and children), in question, must be entered into the CLASS system under CLASS codes "G" and "P2G" until such time as post receives the Department's opinion. The consular officer should state in the request for review whether, if the alien is a nonimmigrant and is determined to be ineligible, a waiver of ineligibility is advisable. CA/VO/L/A will work in concert with DRL/ORIF, the relevant country desk and any other relevant offices to render an advisory opinion regarding the applicability under INA 212(a)(2)(G). If the alien is ultimately found ineligible under that section of the law, the consular officer must deny the application and enter the alien (and any spouse or child) into the CLASS system under CLASS CODE 2G.

9 FAM 40.26 N2.1 Conditions for Request for Advisory Opinion

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A consular officer must request an advisory opinion in cases in which both of the following conditions are met:

- (1) The applicant served within the preceding two years as a foreign government official from a country cited by the Human Rights Reports and/or the Annual Report on Religious Freedom as having committed particularly severe violations of religious freedom, as defined in 9 FAM 40.26 N3.1 below; and
- (2) The consular officer reasonably believes the applicant, during his or her official tenure and at any time within the two years immediately preceding the date of application, has engaged in, was responsible for, or directly carried out particularly severe violations of religious freedom, as defined in 9 FAM 40.26 N3.1 below.

9 FAM 40.26 N2.2 Waiver Provisions

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As mentioned in 9 FAM 40.26 N2, INA Section 212(d)(3)(A) waiver provisions apply to nonimmigrants. There is no waiver of the inadmissibility for immigrants.

9 FAM 40.26 N3 DEFINITION OF TERMS

9 FAM 40.26 N3.1 "Particularly Severe Violations of Religious Freedom" Defined

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In Section 3 Part 11 of IRFA such violations are defined as: systematic, ongoing, egregious violations of religious freedom, including violations such as:

- (1) Torture or cruel, inhuman, or humiliating treatment or punishment;
- (2) Prolonged detention without charges;
- (3) Causing the disappearance of persons by abduction or clandestine detention of those persons; or
- (4) Other blatant denial of the right of life, liberty, or the security of

persons.

9 FAM 40.26 N3.2 "Violations of Religious Freedom" Defined

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Violations of the internationally recognized right to freedom of religion and religious beliefs and practice, as described in Section 2(a)(3) of IRFA, include violations such as:

- (1) Arbitrary prohibitions on, restrictions of, or punishment for:
 - (a) Assembling for peaceful religious activities such as worship, preaching and prayer, including arbitrary registration requirements;
 - (b) Speaking freely about one's religious beliefs;
 - (c) Changing one's religious affiliation;
 - (d) Possession and distribution of religious literature, including Bibles; or
 - (e) Raising children in the religious teachings and practices of one's choice; or
- (2) Any of the following acts if committed on account of an individual's religious belief or practice: detention; interrogation; imposition of financial penalty; forced labor; forced mass resettlement; imprisonment; forced labor and conversion; beating; torture; mutilation; rape; enslavement; murder and execution.

9 FAM 40.26 N3.3 "Foreign Government Officials" Defined

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For a definition of Foreign Government Officials (FGO), see 9 FAM 41.22. In short, the determination of whether an applicant is an official of a foreign government is dependent on whether the services performed by the alien are themselves of an inherently governmental character. In determining if such services rise to the level of being an FGO, consular officers should assess relevant information at the applicant's level of responsibility within the government, and, any policy-making components of the position in

question.

9 FAM 40.26 N4 "PRECEDING 24-MONTH PERIOD" DEFINED

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The preceding 24-month period" is interpreted to mean the 24-month period before the date of the application.

9 FAM 40.26 N5 BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, OFFICE OF INTERNATIONAL RELIGIOUS FREEDOM (DRL/OIRF)

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DRL/OIRF was created within the Department and is headed by the Ambassador-at-Large for International Religious Freedom. The President appoints, the Ambassador-at-Large with the advice and consent of the Senate.

9 FAM 40.26 N6 RESPONSIBILITIES OF AMBASSADOR-AT-LARGE

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- a. According to Section 101 of the International Religious Freedom Act (IRFA), the Ambassador-At-Large will have the primary responsibilities of:
 - (1) Advancing the right to freedom of religion abroad;
 - (2) Denouncing violations of rights, and recommending, responses by the U.S. Government when that right is violated;
 - (3) Acting the principal advisor to the President and the Secretary on matters concerning religious freedom abroad;
 - (4) Acting as the U.S. representative in matters dealing with same; and
 - (5) Assisting the Secretary in preparing reports to Congress concerning

human rights and religious freedom abroad.

- b. On September 1 of each year, the Secretary, with the assistance of the Ambassador-at-Large, shall submit to Congress the annual report on International Religious Freedom, supplementing the recent human rights report. The report will be written with the assistance of and input from all posts; and identify on a country-by-country basis the developments in protection and deterioration of the right to religious freedom. The report will describe the severe violations of religious freedom committed or tolerated by a government and its officials, most importantly for the implementation of visa ineligibility.

9 FAM 40.26 N7 TRAINING REQUIREMENTS OF IRFA THE NEW LAW

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Section 104 of the IRFA amends the Foreign Service Act of 1980 by adding a new section 708. This section require the Secretary of State, with the assistance of the Ambassador-at-Large and other relevant officials to establish training in the field of internationally recognized human rights, including the rights to religious freedom. Section 105 of the IRFA requires the Chief of Mission and the Foreign Service Officers abroad to meet with imprisoned religious leaders "where appropriate and beneficial."